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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,359	06/23/2003	Richard H. Davidson	LIT-021	7098

7590 11/17/2006

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EXAMINER

AIRAPETIAN, MILA

ART UNIT PAPER NUMBER

3625

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,359

Applicant(s)

DAVIDSON ET AL.

Examiner

Mila Airapetian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION
Response to Amendment

The Affidavit filed on 10/10/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Burnbaum reference for the following reasons:

1. Applicants need to present statements as per MPEP 715.07(c):

The 37 CFR 1.1.31 affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country. See 35 U.S.C. 104.

2. Graig D. Hagelin may not merely confirm statements of events of Richard H. Davidson but needs to declare what events of conception, reduction to practice and diligence he has knowledge of.
3. Joseph F. Watkins, Jr. did not execute MPEP 715.04.
4. There is no evidence of diligence for the period just prior to January 13, 2003 - just prior to a reduction to practice.

Item 14 of Mr. Davidson's Declaration states: "*In June of 2002, we hired the firm of Herren, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Ham, LLC, to evaluate our invention and to begin drafting an application ultimately leading to a filing of an application with the United States Patent and Trademark Office. From June of 2002, and working closely with our attorneys; the firm of Welsh & Flaxman, which conducted prior art searches for us; as well as our patent draftsman, Robert*

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Bush, various drafts of the patent application were generated, reviewed, revised and ultimately refined into a final form application which was filed in July, 2003".

However, no evidence in support of this statement has been offered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyden et al. (US 2002/0082733) in view of Burnbaum et al. (US 2004/0138899).

Claim 1. Boyden et al. (Boyden) teaches a system for flavor processing, comprising:

a plurality of consumer workstations linked to a central processing hub (accessing the manufacturer's website over the Internet indicates ability for a plurality of customers to access said website, [0017]);

the central processing hub (manufacturer's website) including means for providing consumers with information regarding flavors, the means for providing including a flavor search system through which a consumer may identify desired flavor

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based upon a series of input criteria [0018]; wherein the criteria include flavor descriptors, and usage categories are selected from the group consisting of bakery, dairy, beverage, confections and oral care [0015], [0016];

said flavor search system includes means for searching available flavors via flavor descriptors and flavor definitions [0015], [0016].

Boyden does not teach means for selecting flavor legal status chosen from the group consisting of artificial, natural and artificial, natural flavor, natural type and natural WONF. However, Boyden does teach that artificial flavorings are mixtures of synthetic compounds that may be chemically identical to natural flavorings [0011]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boyden to include means for selecting flavor legal status chosen from the group consisting of artificial, natural and artificial, natural flavor, natural type and natural WONF, as disclosed in Boyden, because artificial flavorings are low in cost, thereby decreasing the cost of the final product.

Also, Boyden does not that teach that said system includes a flavor search system which is associated with the central processing hub, said flavor search system including means for providing a search results list of available flavors fulfilling the flavor descriptor requirements and the flavor definition requirements.

Burnbaum teaches a system which includes a searchable database which is associated with the server (hub), wherein a user can specify search terms for the type of food and ingredients in order to find a desired recipe [0020].

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boyden to include a searchable database, as disclosed in Burnbaum, because it would advantageously allow to guide users in cooking using specific recipes, as specifically taught by Burnbaum [0010].

Claim 6. Said system wherein the criteria further includes solubility of the flavor (physical form such as water-soluble) [0016].

Claim 11. Said system wherein the means for providing also including means for permitting a user to select the preparation of a custom flavor [0015], [0016].

Claim 12. Said system wherein the consumer workstations and the central processing hub are connected via the Internet [0015].

Claim 13. Said system further including means for providing general information regarding flavors (flavor type, end use, price) [0016].

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jelen et al. (US 6,129,276) teaches a system which includes a searchable database which is associated with the server, wherein the user can specify search terms for the type of ingredients in order to find a desired recipe.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mila Airapetian whose telephone number is (571) 272-3202. The examiner can normally be reached on Monday-Friday 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA

5/26/2006



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